IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 317 OF 1998

Vijay Kumar Jain, of Mumbai Indian Inhabitant residing at Row House No. 4, Grand Parady Apartments, August Kranti Marg, Mumbai - 400 026	]]]]]	Plaintiff
Vs.		
Jain Tube Company Limited a Company registered under the Companies Act 1956 and having Its registered Office at D/20, Connought Place, New Delhi - 110 001 and having their Branch Office at Arcadia Building, Nariman Point, Bombay - 400 021.	]]]]]]]]]]	Defendants

Mr. Cyrus Bharucha a/w Mr. P.P. Paul i/b Nanu Hormasjee & Co. for Plaintiff.

Ms. Sahim Degani i/b Bagla Dandekar & Co. for Defendant.

CORAM : A.S. OKA, J.
DATE : 9TH JULY, 2007

JUDGMENT

1) This suit has been kept under the caption of "un-defended suits for exparte decree". The learned Counsel for the Defendant states that as the Defendant has not given any instructions, the Advocate on record for the Defendant has already applied for discharge. The learned counsel appearing for the Plaintiff has placed on record the Affidavit in lieu of evidence of the plaintiff. The said affidavit is taken on record and marked

‘X’ for identification. Alongwith the Affidavit of evidence, the plaintiff has also tendered an Affidavit of documents which is taken on record and marked ‘Y’ for identification. The Plaintiff has also tendered a compilation of original documents. The said compilation is taken on record and is marked ‘Z’ (collectively) for identification.

2) The suit is for specific performance of the oral agreement as set out in Paragraph no. 10 of the plaint. According to the case of the plaintiff, the defendant had agreed that the plaintiff will have an option to purchase the suit premises at cost price. According to the case of the plaintiff, the cost price of the suit premises at the relevant time works out to Rs.5,22,500/-, out of which the plaintiff had paid a sum of Rs.1,04,500/- before entering the possession of the suit premises. A reliance is placed on the declaration made by the plaintiff under the voluntary disclosure of Income and Wealth Ordinance, 1975 to prove the payment of the sum of Rs.1,04,500/-.

3) The letter dated 1st October, 1990 sent by the defendant discloses that there is no dispute about the fact that an option was given to the

plaintiff to purchase the suit premises. The only contention raised by the defendant is that the option to purchase was to be exercised at market price and not at the cost price. There is no written statement filed by the Defendant.

4) Considering the averments made in the plaint, the Affidavit of evidence and the original documents placed on record, this is a fit case for passing a decree as prayed. The Plaintiff will have to deposit the balance consideration of Rs.4,18,000/- with this Court within a period of 12 weeks from today. Hence, I pass following order :

O R D E R

(i) The suit is decreed in terms of Prayer Clauses (a) and (b), subject to the condition of the plaintiff depositing the balance consideration of Rs.4,18,000/- with this Court within 12 weeks from today.

(ii) If the amount is not deposited by the plaintiff within the stipulated time, the suit will stand dismissed.

(iii) The defendants are ordered to pay costs of

the suit to the plaintiff.

(A.S. OKA, J.)